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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, L.L.P.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* TETSURO MOTOYAMA, AVERY FONG,  
and YEVGENIYA LYAPUSTINA

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Appeal 2009-002470  
Application 09/440,692  
Technology Center 2400

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Decided: October 5, 2009

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Before JOHN A. JEFFERY, ST. JOHN COURTENAY III, and  
STEPHEN C. SIU, *Administrative Patent Judges*.

SIU, *Administrative Patent Judge*.

DECISION ON APPEAL  
STATEMENT OF THE CASE

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1, 3-9, 11-17, 19-25, and 27-32. Claims 2, 10, 18, and 26 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b). An oral hearing was conducted on September 9, 2009.

*The Invention*

The disclosed invention relates generally to monitoring a user's usage of a target application and communicating the monitored information to a desired party (Spec. 3).

Independent claim 1 is illustrative:

1. A system comprising:
  - a device comprising an interface, the interface comprising a plurality of operations to be selected by a user;
  - a monitoring device configured to monitor data of selecting of the plurality of operations of the interface by the user, and to encode and store the monitored data into a log file in the device;
  - a communicating device configured to receive the log file of the monitored data, to decode the stored encoded log file, to create a message of the monitored data, and to then communicate the message of the monitored data;
  - wherein the monitoring device includes a control to automatically start the monitoring without an input from a device to which the message of the monitored data is to be communicated, and
  - wherein the communicating device includes a control to automatically communicate the message of the monitored data by a unidirectional communication without requiring input from the device to which the message of the monitored data is to be communicated.

*The References*

The Examiner relies upon the following references as evidence in support of the rejections:

Motoyama	US 5,819,110	Oct. 06, 1998
Frantz	US 6,003,070	Dec. 14, 1999 (filed Feb. 25, 1997)
Reed	US 6,088,717	Jul. 11, 2000 (filed Aug. 31, 1998)

### *The Rejections*

1. The Examiner rejects claims 1, 5-9, 13-17, 21-25, and 29-32 under 35 U.S.C. § 103(a) as being unpatentable over Frantz and Reed.
2. The Examiner rejects claims 3, 4, 11, 12, 19, 20, 27, and 28 under 35 U.S.C. § 103(a) as being unpatentable over Frantz, Reed, and Motoyama.

### ISSUE

The Examiner finds that “Frantz’s interface comprises a plurality of operations [activation criteria] to be selected by a user” (Ans. 8 (alteration in original)).

Appellants assert that Frantz fails to disclose “any operations selected by a user that are monitored” and that “the ‘activation criteria’ are not in fact user’s selection of operations on the interface” (App. Br. 11) or that the “activation criteria is . . . monitored and logged” (Reply Br. 2).

Did Appellants demonstrate that the Examiner erred in finding that Frantz discloses an interface comprising a plurality of operations to be selected by a user that are monitored and stored in a log file?

### FINDINGS OF FACT

The following Findings of Facts (FF) are shown by a preponderance of the evidence.

1. Frantz discloses an interface device that includes “an e-mail interface . . . which connects the device 10 to the internet” (col. 4, ll. 32-33)

and “is capable of sending and receiving standard e-mail messages” (col. 4, ll. 34-35).

2. Frantz discloses that the interface device also includes an interpreter that “allows information . . . to be converted into an e-mail message . . . directed towards . . . the technician” (col. 4, ll. 37-42).
3. Frantz discloses that if messages contain activation criteria, “the E-mail interpreter and generator queries the database for each intended recipient’s profile . . . then sends to each of the recipients an E-mail message containing the details of the system message” (col. 4, ll. 58-64).
4. Frantz discloses that the “activation criteria can be set . . . where every system message . . . is sent via E-mail [to the technician]” (col. 5, ll. 5-13).

## PRINCIPLES OF LAW

### *Obviousness*

The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, and (3) the level of skill in the art. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

“The combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

### ANALYSIS

Claim 1 recites an interface with a plurality of operations selected by a user, monitoring and storing the selecting and communicating a message of the monitored and stored data. Independent claims 9, 17, and 25 recite similar features.

The Examiner finds that Frantz discloses “a plurality of operations [activation criteria] to be selected by a user” (Ans. 8 (alteration in original)). While the Examiner equates the “activation criteria” of Frantz with the claimed plurality of operations on an interface, the Examiner does not demonstrate that Frantz also discloses or suggests that the activation criteria of Frantz is automatically monitored and stored in a log file and that a message is created of the activation criteria or that such a message is communicated.

Frantz discloses, for example, that “the activation criteria can be set to an alert mode” (col. 5, ll. 3-4) or “maintenance/repair mode” (col. 5, l. 6) and therefore discloses setting selection criteria to a particular mode. Even assuming that setting the activation criteria of a mode of use entails a user selecting a plurality of operations on an interface, the Examiner has not shown that Frantz monitors, stores, and communicates the selection of the activation criteria in the manner claimed. Indeed, while messages of Frantz *resulting from* selecting a particular mode (e.g., emergency system messages) are arguably sent to a user, it does not appear that Frantz communicates any messages pertaining to the selection of activation criteria *itself*.

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In addition, the Examiner has not demonstrated that Reed or Motoyama discloses or suggests the disputed features.

Accordingly, we conclude that Appellants have met their burden of showing that the Examiner erred in rejecting independent claims 1, 9, 17, and 25, and claims 3-8, 11-16, 19-24, and 27-32, which depend therefrom.

### CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have demonstrated that the Examiner erred in finding that Frantz discloses an interface comprising a plurality of operations to be selected by a user that are monitored and stored in a log file.

### DECISION

We reverse the Examiner's decision rejecting claims 1, 3-9, 11-17, 19-25, and 27-32 under 35 U.S.C. § 103.

### REVERSED

msc

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